

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

Nos. 00-5212; 00-5213

---

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

MICROSOFT CORPORATION,  
*Defendant-Appellant.*

---

STATE OF NEW YORK *ex rel.*  
ELIOT SPITZER, *et al.*,  
*Plaintiffs-Appellees,*

v.

MICROSOFT CORPORATION,  
*Defendant-Appellant.*

---

**MOTION OF THE COMPUTER & COMMUNICATIONS INDUSTRY  
ASSOCIATION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*  
SUPPORTING THE PLAINTIFFS**

Pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, D.C. Circuit Rule 29, and this Court's Order of October 11, 2000, the Computer & Communications Industry Association (CCIA) hereby moves this Court for leave to file a brief as *amicus curiae*, supporting appellees. The federal and state plaintiffs have consented to CCIA's participation, but Microsoft has withheld consent. In support of its motion, CCIA states as follows:

1. The Computer & Communications Industry Association is an association of computer technology and telecommunications companies that range from small entrepreneurial firms to some of the largest enterprises in the industry. CCIA's members include equipment manufacturers,

software developers, providers of electronic commerce, networking, telecommunications and on-line services, resellers, systems integrators, and third-party vendors. These members include both producers and consumers of software and of operating systems in particular. CCIA's member companies employ nearly one million persons and generate annual revenues exceeding \$300 billion. CCIA's mission is to further the business interests of its members, their customers, and the industry at large by serving as a leading industry advocate in promoting open, barrier-free competition in the offering of computer and communications products and services worldwide. CCIA's motto is "Open Markets, Open Systems, Open Networks, and Full, Fair and Open Competition," and its website is at [www.ccianet.org](http://www.ccianet.org).

2. CCIA and its members participate in all aspects of the software, information, communications, and Internet industry. They are thoroughly familiar with the markets and practices at issue in this case -- as competitors, as customers, and as observers -- and with the practical significance of that conduct. CCIA rejects the notion that the software industry can function efficiently only under rules prescribed by a monopolist who dictates when innovation may take place, what form it may take, and who may engage in it.

3. For more than 27 years, CCIA has supported antitrust policy that ensures competition and a level playing field in the computer industry. CCIA supported the Tunney Act in the 1973 congressional hearings preceding the enactment of that legislation, and participated as *amicus curiae* in the proceedings examining the current Microsoft consent decree. CCIA is intimately familiar with the shortcomings of that decree, and its failure to prevent or deter Microsoft from continuing on an anticompetitive course.

4. CCIA also participated as *amicus curiae* in the district court and, by consent, in the direct appeal to the Supreme Court. Microsoft, however, has refused to grant consent to CCIA to file an amicus brief in this Court.

5. If granted leave to participate as *amicus curiae*, CCIA expects to file a brief addressing the views of a broad range of businesses that participate in the computer, communications, and software industries and are directly affected by Microsoft's actions. CCIA will focus largely on the economic and practical business aspects of Microsoft's behavior as viewed in the context of the changes in the software industry, and the economic and practical business analysis appropriate to the remedial questions raised by Microsoft's illegal conduct. The insider's perspective that CCIA can provide will help this Court to understand the practicalities of an appropriate remedy for the suppression of competition proved in this case. In particular, a structural remedy such as that ordered by the district court is needed because behavioral remedies do not address the two principal competitive problems demonstrated by the trial evidence: (1) Microsoft's monopoly power in operating systems, which provides multifaceted opportunities for abusive, coercive conduct that are practically impossible to proscribe and prevent in advance, and (2) Microsoft's now-completed use of that monopoly to obtain a monopoly in the Internet browser market, thus blunting the strongest competitive threat to undermine Microsoft's control of PC operating systems.

6. Antitrust remedies must restore competition, neutralize a monopoly that has been abused, deprive a violator of the benefits of its illegal conduct, and prevent a recurrence of anticompetitive activity. Where the antitrust violation involves monopoly, and there is a continuing incentive and ability to abuse that monopoly, only a structural remedy can satisfy these criteria. In our view, the remedy in this case will help to determine whether competition or monopoly governs an industry that is vital to the nation's economy in the 21st Century.

7. As this Court has recognized in deciding to hear this case *en banc* and in closely supervising its scheduling to ensure expedition, this case is extraordinarily important to the public. The significance of the case to businesses throughout the computer and communications industry is particularly acute. In this context, this Court should not accede to Microsoft's inappropriate efforts to control the flow of information to the Court. CCIA will, of course, make every effort to coordinate its presentation with those of other *amici* supporting the plaintiffs and avoid unnecessary repetition.

## **CONCLUSION**

For the foregoing reasons, the Motion for Leave to File Brief as *Amicus Curiae* should be granted.

Dated: October 25, 2000

Respectfully submitted,

---

Edward J. Black  
Jason M. Mahler  
Computer & Communications Industry Association  
666 Eleventh Street, N.W.  
Suite 600  
Washington, DC 20001

(202) 783-0070

## **CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

The Computer & Communications Industry Association (CCIA) is an international, nonprofit association of computer and communications firms as represented by their most senior executives. Small, medium and large in size, CCIA's members include equipment manufacturers, software developers, telecommunications and on-line service providers, re-sellers, systems integrators, third-party vendors and other related business ventures. CCIA exists to be a public voice for its members on issues of concern to them. It has no shareholders or other owners.

---

Edward J. Black

## CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2000, I caused a true and correct copy of the foregoing Motion of the Computer & Communications Industry Association for Leave to File Brief as *Amicus Curiae* in Support of Plaintiffs to be served by facsimile and overnight delivery, postage prepaid, upon:

John L. Warden, Esq.  
Richard J. Urowsky, Esq.  
Steven L. Holley  
SULLIVAN & CROMWELL  
125 Broad Street  
New York, NY 10004  
Fax: (212) 558-3588

Richard L. Schwartz, Esq.  
Deputy Chief, Antitrust Bureau  
NEW YORK STATE ATTORNEY GENERAL'S OFFICE  
120 Broadway, Suite 2601  
New York, NY 10271  
Fax: (212) 416-6015

A. Douglas Melamed, Esq.  
Acting Assistant Attorney General  
Antitrust Division  
U.S. DEPARTMENT OF JUSTICE  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530  
Fax: (202) 514-6543

and by overnight delivery, postage prepaid, upon:

William H. Neukom, Esq.  
David A. Heiner, Jr.  
Thomas W. Burt  
Christopher Joseph Meyers  
MICROSOFT CORPORATION  
One Microsoft Way  
Redmond, WA 98052